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Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 118.

NORTHERN PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

AUGUST HASSE AND ——— HASSE, HIS WIFE.

BRIEF FOR PLAINTIFF IN ERROR.

This action was brought by the Northern Pacific Railway Company in the Superior Court of Kittitas County, Washington, one of the courts of that state of original jurisdiction. Its purpose was, to recover possession of the railroad right of way, and the complaint (Transcript pp. 1-2) alleges title to the premises by virtue of the act of Congress of July 2, 1864; also that the defendants August Hasse and his wife were in unlawful possession.

The answer (Transcript pp. 3-4) pleads adverse possession for more than sixteen years.

The trial court took the case away from the jury and rendered judgment for the plaintiff (Transcript, p. 6). A bill of exceptions was settled (Transcript pp. 13-27) which shows; that it was stipulated between the parties that the plaintiff was a corporation under the laws of Wisconsin, duly licensed and authorized to operate a railroad in the state of Washington; that it was the successor, by proper conveyances, of the Northern Pacific Railroad Company, the corporation chartered by the act of Congress of July 2, 1864; "that under and by virtue of said act and in accordance therewith," the Northern Pacific Railroad Company in the year 1886, or thereabouts, constructed its railroad across the quarter section claimed by defendants which was then public land of the United States, a part of the public domain; that ever since the railroad has been continuously operated by the Northern Pacific Railroad Company and its successors; that defendant August Hasse claims to own the premises by virtue of a homestead application filed May 24, 1883, final proof July 12, 1888, and patent September 27, 1887; that defendants were in possession of the right of way, except five and one-half feet on each side the center of the main track and were withholding possession from the plaintiff.

From the judgment of the Superior Court of Kittitas County an appeal was taken by the defendants to the Supreme Court of Washington, which reversed the trial court and rendered judg-

ment against the plaintiff in error. The opinion and judgment of the Supreme Court will be found Transcript pp. 29-33.

As the Supreme Court of Washington correctly stated in its opinion (Transcript pp. 29-30), "It is urged by counsel for defendants that the plea of the statute of limitations should have been sustained and this is the vital question in the controversy." The court held that the plea should have been sustained and that the Railway Company had lost its right of way because of the adverse occupation of the defendants in error for the time required by the statutes of Washington. This decision and judgment were rendered before the opinion of this court in *Northern Pacific Railway Company v. Townsend*, 190 U. S. 267.

Errors are properly assigned (Transcript p. 34). The error complained of consists in sustaining the plea of the statute of limitations against the title of the Railway Company to its right of way, contrary to the decision of this court in *Northern Pacific Railway Company v. Townsend.*

This case is controlled by the decision in the *Townsend* case, and we submit that the judgment of the Supreme Court of Washington should be reversed.

Although in this case the railroad was not built until after Hasse's entry, this court has long since settled that *the right of way grant* in acts of Con-

gress like the Northern Pacific grant, *unlike the land grant,* is effective from the *date of the act,* and the only question is, whether the land was public land at that date. *Railroad Company v. Baldwin,* 103 U. S. 426; *Bybee v. Oregon & California Railroad Co.,* 139 U. S. 663, 679-680.

C. W. BUNN and
JAMES B. KERR,
for Plaintiff in Error.